



"Washington's only exclusive representative of small businesses"

INDEPENDENT BUSINESS ASSOCIATION

July 27, 2005

Mike Gallagher
PBT Coordinator
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Mr. Gallagher:

Thank you for this opportunity to submit comments on the proposed new rules WAC 173-333-100 – 430. Clearly these are very important rules setting in place a procedure to identify possible PBTs and prepare Chemical Action Plans for some substances.

IBA is willing to accept the conclusion of the Department that the proposed new rule will not have an economic impact on small businesses and thus no Small Business Economic Impact Statement is required for this proposed rule if one clarification is made. IBA remains extremely vigilant about any agency rules that impose cost on small businesses.

While we were included as a participant on the PBT Advisory Committee, we have reviewed the rule yet again now that it has been proposed. We believe one additional clarification is needed to clearly notify all parties that a CAP's recommendations are truly voluntary actions and someone or some entity who does not follow a CAP's recommendation shall not be subject to any citation or sanction. While it states generally in WAC 173-333-120 that the new rule will not result in any new authorities, it also states that it does not constrain any existing authorities.

There is concern by IBA members that a CAP could be used possibly in the future to impose an interpretation on an existing WAC that could then result in a sanction or citation for failing to follow a CAP recommendation. For example: say a CAP for a PBT recommends that the PBT not be disposed of in a landfill but there is no current rule banning the PBT from disposal in a landfill. If the CAP was the basis of a Department directive to ban the disposal of that PBT in a landfill without specific rulemaking to create such a ban, the recommendation would then result in an action by this rule that IBA would find totally unacceptable.

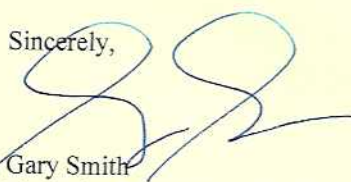
Thus, we specifically request the following change (underlined) be made to proposed WAC 173-333-420 to clearly notify all parties who have not been a party to the development of this rule as to the force and effect of a CAP's "recommendations."

NEW SECTION

WAC 173-333-420(f) Recommendations. Recommendations in a CAP are voluntary actions that are recommended and failure to take the voluntary action shall not subject a person to any sanction or penalty, nor shall any recommendation be the basis of a directive or interpretation for the application of any existing agency law or rule. The recommendations will include:

Thank you for considering our recommended change. If you have any questions regarding our comments, feel free to contact us at 425-453-8621.

Sincerely,


Gary Smith
Executive Director